

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE H.L. DATTU

WRIT PETITION NOS. 2981/1993 C/W 2198/1993
C/W 6025/1993 C/W 2672/1993

BETWEEN:

W.P. 2981/1993

1. Vokkaligara Sangha
A society regd. under
the Societies Registra-
tion Act, K.R. Road
V.V.Puram, B'lore-4
reptd. by its General
Secretary.

.... Petitioner.

(By Sri Gangireddy, Adv.)

AND

1. Director of Collegiate
Education, Palace Road
Bangalore-1.
2. Venkappagowda K. major
Lecturer in Kannada
Kuvempu First Gr. College
Chennapatna, B'lore Dist.
3. Krishnamurthy V.
major, Lecturer in History
M.L.A. College, Malleshwaram
Bangalore.
4. Smt. Chandra, major
First Divn. Asst.
Vasavi Vidyaniketana
College, Bangalore.
5. Puttaswamy P.M. major
Attender, V.V. Puram Arts
& Commerce College, V.V. Puram
Bangalore-4.

6. Sriramaiah, major
Peon, Vasavi Vidyaniketan
College, Bangalore.

.... Respondents.

(By Sri S. Udayashankar AGA for R1.
Sri B.A. Raja Rao Scindia, Adv. for R2)

W.P. 2198/1993

BETWEEN:

Sri M. Devaraju
S/o Sri Marigowda, 39 yrs.
11 Divn. Asst. V.V. Puram
College of Science
K.R. Road, Bangalore-4.

.... Petitioner.

(By Sri S. Vasanthakumar, Adv.)

AND:

1. The Director of Collegiate
Education in Karnataka
Palace Road, B'lore-1.
2. The Management of Vokkaligara
Sangha, by its General
Secretary, K.R. Road
V.V. Puram, Bangalore-4.
3. Sri Chandra
FDA, Vasavi Vidhana Niketana
College, Basavanagudi
Bangalore-4.

.... Respondents.

(By Sri S. Udayashankar, AGA for R1.
Sri Gangireddy, Adv. for R2)

W.P.No.6025/1993

BETWEEN:

Smt. S. Shashikala M.A.
D/o Sri H. Satyanarayana
33 yrs. Lecturer in History
National College, Jayanagar
Branch, Bangalore-82.

.... Petitioner.

(By Sri S. Vasanthakumar, Adv.)

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..3..

AND:

1. The Director of Collegiate Education, Karnataka
Seshadri Road, B'lore-1.
2. The Management of the National Education Society of Karnataka (R) by its Honorary Secretary
Basavanagudi, B'lore-4.
3. Sri H.P. Krishnappa
Lecturer in History
Acharya First Grade Women's College, Gauribidanur, under transfer to National College
Basavanagudi, B'lore-4.

.... Respondents.

(By Sri Udayashankar, AGA for R1.
Sri Shetty & Hagde A/S for R3)

W.P.No.2672/1993

BETWEEN:

Sri C. Jayaprakash
S/o M.G. Chandrasekar
39 yrs. FDA, Seshadri-
puram College, B'lore-20.

.... Petitioner.

(By Sri S.Vasanthakumar, Adv.)

AND:

1. The Director of Collegiate Education in Karnataka
Palace Road, B'lore-2.
2. The Seshadripuram Educational Trust (R), by its General Secretary, Seshadripuram
College Bldgs. B'lore-20.

.... Respondents.

(By Sri S. Udayashankar AGA for R1.)

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These W.Ps. are filed under Art.226 of the Constitution of India, praying to set aside the order made by R# dated 21.12.1992, etc.

These W.Ps. coming on for Hearing this day, the Court madethe following:

ORDER

Petitioner in W.P.2981/1993 is a Registered Society registered under the provisions of Karnataka Societies Registration Act. Petitioner-Society is running Arts, Commerce, Science, Medical and Engineering Colleges, which is a private institution and affiliated to Bangalore University and is getting grants from the State Governmentas provided under the Grant-in-aid Code.

2. Petitioner in W.P.2198/1993 was working as Second Division Assistant in the V.V.Puram College of Science. Petitioner in W.P.6025/1993 was working as Lecturer in History in the National College, Bangalore. Petitioner in W.P.2672/1993 was working as First Division Assistant in the Seshadri-puram College, Bangalore.



3. Petitioners were constrained to approach this Court being aggrieved by the orders made by the Director of Collegiate Education dated 21.12.1992. By the said impugned order, the Director of Collegiate Education has transferred some of the Lecturers from the colleges under the control of the petitioner-society (W.P. 2981/1993 & 2198/1993) and petitioners in W.P. 6025/1993 and 2672/1993 to various other colleges.

4. The impugned order is questioned by the petitioners on the sole ground that the Director of Collegiate Education has no competence to pass the aforesaid order.

5. The Government of Karnataka by an order in No.ED 146 UPC 79, dated 3.10.1981 has issued certain guidelines in the matters of appointments, transfers, etc., consequent upon the introduction of the direct payment of the salary scheme w.e.f.1.10.1977. In so far as the transfers are concerned, there are two clauses in the Government Order. Clause III of the Government order speaks of transfers under the same management and clause 7 speaks of transfers from the college under the control of one management to another

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college under the administration ~~management~~ of a different management. The said clause is relevant for the purpose of this case. Therefore, it is extracted and it reads as under:


"7. Transfers:

1. Whenever there is a fall in the work load, rendering an employee surplus in a College or a surplus member of Ministerial staff, the Director shall have the power to transfer such surplus employees to another college where there are vacancies and such transfers shall be accepted by the concerned Management.

Provided the employee so transferred is liable for retransfer to the parent institution whenever there is sufficient work or a vacancy.

2. The Director shall have power to transfer on request of an employee of a college to another such college under the control of Director of Collegiate Education in cases of hardship subject to availability of workload/vacancy, provided both the managements pass a resolution agreeing to such a transfer. The transferred employee shall be the juniormost in that cadre as on the date of transfer."

An analysis of the aforesaid clause would
if
clearly indicate that/the officer of the State
Government, in the instant case the Director



of Collegiate Education, is of the view that there is a fall in the work load rendering an employee surplus in the institution or a surplus member of Ministerial staff, he shall have the power to transfer such an employee to another college, where there are vacancies. It is also made clear in the sub-clause (1) of clause 7 that under such circumstances, the management shall accept the transferred employee. Proviso appended to sub-clause gives an indication that the transferred employee can be re-transferred to the parent institution whenever there is a sufficient work in the institution or a vacancy arises.

Sub-clause (2) of clause 7 envisages that the Director has the power to transfer both teaching and non-teaching staff from one college to another college on a request made by the employee concerned. Before such transfers could be made, it is made abundantly clear that both the managements should

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pass a resolution agreeing for such transfer. Under subclause (2), the Director on his own cannot transfer a person on a request made by the employee, he should necessarily obtain the consent of the managements of both the institution agreeing for such a transfer, otherwise the Director will not be in a position to effect transfer of an employee of a college to another college on a request made by him. This is all what sub-clauses (1) and (2) of Clause 7 of the Government Order would say.

6. Keeping in view the possible construction of clause 7 of the Government Order dated 3.10.1981, let me now advert to the fact situation in the present case.

7. Petitioners in these writ petitions were working as Second Division Assistant, Lecturer and First Division Assistant respectively in different Colleges. They were transferred by the impugned order made by the Director of Collegiate Education dated 21.12.1992 to a different colleges. Accord-

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ing to the learned Counsels for the petitioners, this transfer order could not have been made by the respondent-authorities without the consent or without agreeing for such transfer.

8. Per contra, Sri Udayashankar, learned Addl. Govt. Advocate justifies the impugned order on two grounds. Firstly, by virtue of clause 7 of the Government Order dated 31.10.81, the State Government and its officer has the power to transfer both teaching staff as well as non-teaching staff from one college to the other college for the reasons enumerated in the clause 7 itself. Secondly, he submits that since the State Government is paying the salaries of all the teaching and non-teaching staff of the college, the State Government is entitled to transfer an employee of a college from one college to other college.

9. In so far as the second contention of the learned Addl. Govt. Advocate is concerned, it is difficult to accept the same, for the reason, even though the State Government pays the salaries of the teachers/non-teaching staff member, they still continue to be under

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the control of the management. This Court in SHIVAJI HIGH SCHOOL VS. PRABHAKAR JOTIBA BAMANE reported at ILR 1985 KAR 3979 was pleased to observe that there is no relationship of master and servant between the teachers of Private Educational Institutions aided or un-aided and the Government.

10. Just because the State Government pays the salary to these teachers directly, it cannot be said that they have a master and servant relationship with the teachers. In that view of the matter, the submission of the learned Addl. Govt. Advocate for the State Government cannot be accepted.

11. Further, it is difficult to sustain the impugned orders made by the Director of Collegiate Education. Clause 7 is hedged with certain conditions for the State Government to transfer an employee in a college to the other college managed by the different management altogether. Sub-clause (1) of clause 7 makes it very clear that the Director could transfer an employee provided the con-

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ditions enumerated therein are satisfied. First and foremost, the Director of Collegiate Education should come to the conclusion that there is a fall in the work load rendering an employee surplus in the college or a surplus member of Ministerial staff in the college. There must be a further conclusion by him that there are vacancies in the other college. It is only under those two circumstances by invoking sub-clause (1) of clause 7 of the Government Order, the Director of Collegiate Education can transfer both teaching staff and non-teaching staff members of an institution. In the instant case, it is neither in the impugned order nor the State Government has filed its objections statement to indicate that petitioners in these writ petitions were transferred on the ground that there is a fall in the work load rendering the teachers/lecturers surplus in a particular college. In the absence of such a mention either in the impugned order or in the note/^{sheet} maintained by the Director, it is difficult to say that the Director has exer-

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cised his powers properly under sub-clause (1)
- of clause 7 of the Government order.

12. The proviso appended to sub-clause (1) of clause 7 also makes it clear that a person can be re-transferred to the parent institution whenever there is sufficient work load or a vacancy. This gives a clear indication that an order made under sub-clause (1) of clause 7 is only a temporary arrangement with an option for the transferred employee to come back to his parent institution whenever there is sufficient work load in that institution. All these aspects of the matter should have been taken into consideration by the Director of Collegiate Education before passing the impugned orders. Since the same has not been done by the Director of Collegiate Education, it is difficult to sustain the orders made by him.


13. Sub-clause (2) of clause 7 can be invoked by the Director of Collegiate Education in a different context altogether..
The Director can resort to the aforesaid

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provision only if a request is made by an employee of the college for a transfer from one college to the other college. Even here, the provision itself makes a condition that such a transfer could be effected provided the managements of both the institutions pass resolution agreeing for such a transfer. If managements for any reason does not agree for such a transfer even a request is made by the employee working in the institution, the Director, in my view, has no power whatsoever to transfer the employee even at his request.

14. Since the Director in the impugned order has not stated nor in the note sheet that they have maintained, that the transfers had been done because of a fall in the work load rendering an employee surplus in a particular college, the impugned orders cannot be sustained. Accordingly, they are required to be set aside by this Court.

15. A reading of the impugned order also makes it clear that employees transferred from one college to other college should be the junior most in the cadre in that college.



This ^{could have been done} ~~can be applied~~ only if ~~the~~ transfer ~~was~~ made on a request made by the employee and if a transfer is made under sub-clause (1) of clause 7, the employee cannot be the junior most in that cadre. However, the Director in his order makes it obvious that the transferred employee will be the junior most in that cadre in the transferred college. Even on that score, the impugned order made -by the Director of Collegiate Education dated 21.12.1992 requires to be set aside by this Court.

16. For the reasons stated, the impugned order made by the Director of Collegiate Education dated 21.12.1992 is set aside. However, liberty is reserved to the Director of Collegiate Education to effect transfers if he so desires by invoking sub-clause (1) of clause 7 of the Government order dated 3.10.1981 only after complying with all the conditions enumerated under the aforesaid clause.

17. In all these writ petitions, petitioners immediately after the orders are issued by the

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Director of Collegiate Education had approached this Court and had obtained an interim order of stay. But in W.P.6025/1993, even before the interim orders could be implemented by the respondents, the transferred employee had ^{been relieved of} ~~released herself~~ and she has joined as a Lecturer in the transferred college.

18. In that view of the matter, in so far as petitioners in the other writ petitions are concerned, to continue to be in the college in which they are working as on today, subject to the further orders that may be made by the Director of Collegiate Education, keeping in view sub-clause (1) of Clause 7 of the Government order and also the observations of this Court in these writ petitions.

19. Petitioner in W.P.6025/1993 is at liberty to approach the respondents with a request to transfer her to the parent institution. If such a request is made to the Director of Collegiate Education, the Director shall take the request into consideration and

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pass appropriate orders as provided under sub-clause (2) of clause 7 of the Government order.

20. With these observations and directions, these writ petitions are disposed of. Ordered accordingly.

Sd/-
JUDGE

